

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DAVID STOCKTON</b>	)	
Claimant	)	
VS.	)	
	)	
<b>WASCOT INC.</b>	)	Docket No. 237,604
Respondent	)	
AND	)	
	)	
<b>EMPLOYERS MUTUAL CASUALTY COMPANY &amp; THOMAS McGEE</b>	)	
Insurance Carriers	)	

**ORDER**

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on May 7, 1999.

**ISSUES**

The sole issue on appeal is whether claimant made a timely written claim as required by K.S.A. 44-520a. The Administrative Law Judge found that he did not and, on that basis, denied the requested benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

Claimant, who worked for respondent as a drilling truck operator, was injured in October 1997 when a post driver came off the top of the post and struck claimant on the top of his head. Claimant testified that he and his coworker quit early because of the injury. Claimant did not otherwise miss work because of this injury, but voluntarily terminated his employment for other reasons in January 1998.

Based upon the facts of this case, the Board concludes that the date of accident in this case is mid-October 1997 and, under the circumstances presented here, claimant would have had 200 days to file a written claim. Claimant did not file a written claim until October 1998.<sup>1</sup>

---

<sup>1</sup> Attached to the record is a written claim bearing a date of September 29, 1998, but also showing a received stamp for sometime in October 1998.

Claimant testified to a specific traumatic injury in October 1997. The post driver struck his head. Claimant did not recall the specific date, only that it was in October. At the close of the preliminary hearing, the parties agreed that it was sometime between October 5 and October 17, 1997. Claimant contends the date of accident should be later because his condition, headaches and blackouts, became worse through the last day worked. But claimant's testimony does not link the worsening to work activities as opposed to the natural progression of the condition. The Board finds the accident was a single traumatic event in mid-October 1997, not a repetitive trauma injury.

The Board also finds claimant would have had 200 days to serve a written claim because respondent was not obligated to file an Employer's Report of Accident. K.S.A. 44-557 requires employers to file a Report of Accident within 28 days if the injuries are sufficient to "incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained." The evidence in this case indicates claimant was not incapacitated for more than the remainder of the day. Respondent was, therefore, not required to file an Employer's Report of Accident.

Claimant also relies on the Court of Appeals decision in *Burnside v. Cessna Aircraft Co.*, 24 Kan. App. 2d 684, 951 P.2d 1315 (1998). But that case relates to the time limits for Application for Hearing under K.S.A. 44-534a, not written claim. Failure to file a Report of Accident may extend indefinitely the time to file an Application for Hearing. But failure to file a Report of Accident, when obligated to file such a report, extends the time for written claim but only to one year. See K.S.A. 44-557; *Childress v. Childress Painting Co.*, 226 Kan. 251, 597 P.2d 637 (1979). In this case, the failure to file the Report of Accident does not extend the time because respondent was not obligated to file such a report. Claimant had 200 days to make a written claim. Since he did not do so, the Order by the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on May 7, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1999.

---

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
Kirby A. Vernon, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director